

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Improving Competitive Broadband Access)	GN Docket No. 17-142
to Multiple Tenant Environments)	
)	

Comments of Boingo Wireless, Inc.

Boingo Wireless, Inc. (“Boingo”), by its attorneys, hereby submits these Comments in response to the Notice of Proposed Rulemaking in the above-referenced docket in which the Federal Communications Commission (“FCC” or “Commission”) seeks comment on a variety of issues that may affect the deployment of broadband to multiple tenant environments (“MTEs”).¹ As explained herein, the Commission should not regulate access to distributed antenna systems (“DAS”). Regulating access to DAS is unnecessary, particularly in the case of neutral host DAS networks, and will deter investment in such systems, hamper the deployment of advanced services, limit competitive access to MTEs, and, ultimately, harm the ability of consumers to have access to the wireless service provider of their choice.

I. Introduction and Background

Boingo has grown from its start-up status 18 years ago to being one of the largest operators of indoor DAS in the United States. As a neutral host DAS provider, Boingo builds DAS networks in MTEs and public venues and then negotiates transactions with carriers on behalf of building owners and agents to use the DAS network. Boingo provides neutral host

¹ *Improving Competitive Broadband Access to Multiple Tenant Environments*, Notice of Proposed Rulemaking, GN Docket No. 17-142, FCC 19-65 (rel. July 12, 2018) (“NPRM”). See also Public Notice, *Wireline Competition Bureau Announces Comment Dates for NPRM on Improving Competitive Broadband Access to Multiple Tenant Environments*, GN Docket No. 17-142, DA 19-730 (rel. July 31, 2019).

DAS networks in condominiums, apartment buildings, college dormitories and campuses, military barracks and bases, and many public venues such as airports and sporting event stadiums.² As a neutral host DAS provider, Boingo provides competitive access solutions to *all* carriers and has an interest in making sure all tenants and guests have access to the wireless service provider of their choice. As such, Boingo believes it is uniquely qualified to provide comments in response to the Commission's inquiries regarding access to DAS facilities.

II. Exclusivity Is Necessary to Improve Competitive Access to MTEs with a Neutral Host DAS Provider and to Benefit Tenants, Consumers, and MTE Owners.

In the NPRM, the Commission seeks comment on whether it should take action on access to DAS.³ Boingo's goal is to ensure that all tenants and guests are provided with an equal opportunity to have enhanced coverage and connectivity, regardless of their wireless service provider.

Boingo believes that the benefits of exclusivity for all parties far outweigh any contemplated regulation of access to DAS. The absence of exclusivity will not only discourage neutral host DAS providers such as Boingo from installing DAS networks at MTEs, but also will disadvantage: (i) small carriers who lack the resources to deploy their own DAS networks in such MTEs; and (ii) small MTE owners who lack the resources to deploy their own neutral host DAS networks in such MTEs.

Boingo generally opposes restrictions on exclusivity to DAS as any such regulation is not only unnecessary but any marginal benefits would be outweighed by the harm caused to MTE owners, neutral host DAS providers such as Boingo, and ultimately, tenants and consumers. As a

² Some of these environments are MTEs under the Commission's rules, and some are not.

³ See NPRM at ¶ 22.

neutral host DAS provider, Boingo primarily focuses its comments on neutral host DAS facilities.⁴

A. Exclusive Arrangements with Neutral Host DAS Providers Benefit Tenants and Consumers.

Constructing a DAS can be cost-prohibitive for MTE owners who have limited funding capacity. Neutral host providers such as Boingo have the ability to assist these MTE owners by fronting the capital costs to construct a DAS. This provides MTEs which would not otherwise construct a DAS with a means to improve wireless coverage for their tenants and guests.

In addition, Boingo dedicates time and resources to market the DAS to carriers on behalf of MTE owners, which Boingo would not do in absence of exclusivity. Without a “one-stop shop” such as Boingo, MTE owners would need to negotiate and manage arrangements with multiple carriers on their own, but not all MTE owners have the experience, time or resources (including a dedicated team) to do so. This could delay or completely inhibit the ability of carriers to access the DAS at the MTE and adversely affect the tenants and consumers that are customers of these carriers.

Boingo’s neutral host design is typically constructed in coordination with carriers with the goal to ensure fair and equal access and to minimize interference amongst carriers. This system enables competitive access by all carriers, including small carriers, giving tenants and consumers more choice in their wireless provider.

⁴ As discussed in Section V, the regulation of access to DAS in public spaces is outside the scope of this proceeding, however, Boingo’s comments regarding neutral host DAS are equally applicable to MTEs and to public spaces such as sporting venues, and there is no justification for the Commission to take action to regulate access to DAS in either case. Boingo’s comments opposing regulation of exclusivity for DAS also are equally applicable to rooftop antennas. Moreover, the Commission lacks jurisdiction to regulate contractual arrangements between a building owner/agent and a neutral host DAS provider like Boingo.

B. Exclusive Arrangements with Neutral Host DAS Providers Benefit MTE Owners.

MTE owners often benefit financially from a neutral host DAS provider such as Boingo because Boingo designs and builds the DAS network, typically at no cost to the MTE owners and in some instances, without carrier agreements already in place. With Boingo as the neutral host DAS provider, MTE owners do not incur any costs in: (i) constructing the DAS; or (ii) dealing with carriers that want to access the DAS network. In addition, Boingo is able to design a system which promotes equal access by all carriers and is intended to minimize interference amongst carriers.

In addition to the financial benefits, MTE owners also benefit from an efficiency and aesthetic standpoint. Having multiple DAS providers at an MTE location involves having multiple sets of antennas and multiple lines of fiber at a location. In Boingo's experience, MTE owners almost always prefer to have a single DAS provider at a location, making more efficient use of limited power, equipment, and space resources, while also limiting the impact that DAS facilities can have on the aesthetics of a building. MTE owners generally view multiple DAS providers as requiring redundant infrastructure and additional, unnecessary costs, which as stated above can include the MTE owner's time and resources of having to negotiate and manage arrangements with multiple carriers.

As a neutral host DAS provider, Boingo addresses the concerns that MTE owners have with regard to multiple DAS facilities. The DAS network that Boingo builds is shared by multiple carriers, addressing MTE owners' desire for efficient use of space, equipment, and power. A single DAS network also limits the impact that such networks have on the aesthetics of MTE buildings.

Exclusive arrangements with neutral host DAS providers make it far easier and more efficient for building owners to facilitate greater access to their properties by many carriers with different technical requirements and financial ability. Regulating that access afforded by exclusive arrangements with neutral host DAS providers would not only infringe on the rights of building owners to control access to their properties, but such regulation would actually limit competitive access to these properties because of the impact on the owners in the form of lost efficiencies, increased costs, and greater space requirements that would be incurred without the ability to enter into exclusive arrangements with neutral host DAS providers.

C. Exclusive Arrangements with Neutral Host DAS Providers Benefit Carriers and Promote Competitive Access to MTEs.

Boingo offers an even playing field for all carriers, and that enables competitive access by all carriers, including small carriers. Because Boingo offers a shared DAS network, the costs of accessing that network also are shared by carriers and are far more reasonable than the costs that would be involved with building a carrier-specific DAS network. In some buildings, the cost sharing model actually brings on more carriers than would normally join a DAS due to more affordable access. While all carriers accessing an MTE building through the shared network of a neutral host DAS provider benefit from the reduced access costs, these cost savings facilitate competitive access because small carriers are able to access buildings where they could not otherwise afford to deploy their own systems. Boingo offers carriers flexible and accommodating price structures for access to the DAS networks, and Boingo is committed to negotiating with carriers to ensure that they have reasonable and fair access to the network.

While Boingo is the means for a carrier to access an MTE location where Boingo has been selected by the MTE owner as the exclusive neutral host DAS provider, Boingo and the MTE owner benefit from having as many carriers as possible access the DAS network. Boingo

has no incentive to discriminate against carriers or unreasonably deny or restrict access to the DAS network; in fact, Boingo has the incentive to keep its rental rates reasonable in order to maximize the number of carriers that use the DAS network.

Because Boingo's interests are to ensure that MTEs' guests, residents, and tenants have access to a best-in-class network and enhanced wireless coverage from all interested carriers, Boingo builds its DAS networks after seeking input from carriers to ensure that the systems will accommodate the operational needs of all carriers. No carrier has ever been prevented from accessing a Boingo neutral host DAS network based on technological issues because Boingo always works to find solutions for carriers to access a Boingo DAS network. When MTE buildings are served by a neutral host DAS network that accommodates the technical requirements of all carriers there is greater competitive access to the buildings. Indeed, Boingo has an incentive to minimize interference issues in order to allow more carriers to join the DAS network.

There is no need to regulate access to MTE buildings where building owners provide access to carriers through a neutral host DAS provider.

III. Exclusivity Is Critical for Neutral Host DAS Providers to Build Networks and Offer Competitive Access.

As explained above, in Boingo's experience, MTE owners prefer to work with one DAS provider for efficiencies in space, equipment, and power, for cost and time savings, as well as for the benefits that a neutral host DAS provider offers to the MTE's guests, residents, and tenants through the level playing field that facilitates access by all carriers. In order to offer these efficiencies, savings, and benefits, Boingo requires exclusivity with an MTE owner for the DAS network. Boingo makes a significant investment at an MTE location with electronics and other equipment, fiber radio antennas, and costs to design, build, operate and administer a neutral host

DAS network. Typically, Boingo makes that investment without guarantees from any carriers that they will rent access to the DAS network. Boingo cannot make these kinds of investments if Boingo does not have exclusivity at MTE locations.

Any regulatory action that would prohibit MTE owners from entering into exclusive arrangements with neutral host DAS providers like Boingo would significantly reduce, if not completely inhibit, Boingo's desire to invest in DAS infrastructure at MTE locations. From the perspective of a neutral host DAS provider, exclusive arrangements at MTE locations are critical for MTEs having better DAS solutions and for carriers having competitive access to MTE locations. When a neutral host DAS provider has an exclusive arrangement with an MTE, MTE owners benefit from space, equipment, and power efficiencies; cost and time savings; and less impact on aesthetics of DAS networks at the location. That exclusive relationship also benefits carriers because it facilitates competitive access to MTE locations by limiting the costs to access the network because the network is shared and by accommodating the technical requirements of all carriers. Most importantly, exclusivity with a neutral host DAS benefits tenants and consumers by improving their wireless coverage without limiting their choice in wireless service provider. Accordingly, Boingo urges the Commission to refrain from taking any regulatory action on access to DAS at MTE locations where MTE owners have entered into an exclusive arrangement with a neutral host DAS provider, or to prohibit MTE owners from entering into such exclusive arrangements with neutral host DAS providers in the future.

IV. Neutral Host DAS Providers Already Offer Technological Upgrades to Networks Benefitting Tenants, Carriers and MTEs.

In the NPRM the FCC also seeks comment on whether it should require compatibility or future-proofing requirements.⁵ While Boingo believes that future-proofing a DAS network is impossible, Boingo designs its DAS networks to facilitate changes in technology which allows the flexibility for future upgrades and additional technologies which will benefit tenants, carriers and MTEs. Much of the existing infrastructure in Boingo's DAS networks, such as cabling, headend, power, and other utilities are ready for upgrades to 5G networks. As such, Boingo opposes any regulation of the DAS to impose "compatibility" or "future-proofing" requirements to DAS facilities as such efforts would prove to be redundant with current practice.

V. The Regulation of Access to DAS in Public Spaces Is Beyond the Scope of this Proceeding.

In the NPRM, the Commission seeks to address the needs of the millions of people who live and work in apartments, condominium buildings, cooperatives and office buildings – buildings that are occupied by multiple *tenants*.⁶ Boingo applauds the Commission for seeking comment to address the needs of tenants in MTEs to be able to obtain access to competitive broadband services. Boingo opposes, however, expanding the definition of MTEs beyond the tenant environments covered by the Commission's historical actions, and opposes any regulation of access to DAS in public spaces such as airports and entertainment and sporting venues. The Commission should not conflate the provision of access to competitive broadband services to tenants in MTEs, with the provision of wireless services to transient guests in public spaces.⁷

⁵ See NPRM at ¶ 23.

⁶ See NPRM at ¶ 1 and note 2.

⁷ See *Promotion of Competitive Networks in Local Telecommunications Market et al.*, 15 FCC Rcd 22983, n. 92 (2000) ("2000 Competitive Networks Order") (*noting that* "hotels, or similar establishments, are not covered by the prohibition against exclusive contracts because hotel

The regulation of access to wireless services over DAS in public spaces is far outside the scope of this proceeding and the Commission's focus on access to competitive service by *tenants*. Any such regulation would be procedurally defective as the NPRM does not provide adequate notice of the expansion of regulation to public spaces such as sporting venues rather than "tenant environments," and to the access of wireless services by the guests and invitees in venues and similar public space environments.

Conclusion

Exclusive arrangements between neutral host DAS providers and MTE owners benefit consumers, tenants, MTE owners, and all carriers by providing an efficient and cost-effective DAS solution for MTE owners and competitive access to MTEs by all carriers. There is no problem that requires a regulatory "fix" in these situations. Regulating access to DAS or mandating compatibility or future-proofing requirements for DAS networks would deter or otherwise prohibit investment in such systems, stymie competitive access to MTE locations,

guests are not 'tenants' within the meaning of our rules."). *See also Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, ¶ 7, 22 FCC Rcd 20235 (2007) (*noting that* "MDUs do not include time share units, academic campuses and dormitories, military bases, hotels, rooming houses, jails, prisons, halfway houses, hospitals, nursing and other assisted living places, and other group quarters characterized by institutional living, high transience and, in some cases, a high need for security."). To the extent that the Commission has characterized shopping malls as MTEs, it is in the context of access to competitive communications services by commercial tenants in such shopping malls (*i.e.*, stores), rather than access to communication services by transient customers. Unlike shopping malls, apartment complexes, and condominiums where the tenants are the primary business purpose of the undertaking, the primary business purpose of public venues, such as airports and entertainment and sporting venues, is service to the transient guests at the venue.

delay the deployment of advanced services and, ultimately, limit consumer choice. Accordingly, the Commission should take no action to regulate access to DAS.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'G. Whiteaker', with a long horizontal flourish extending to the right.

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